

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**BANK OF AMERICA, N.A., as successor to  
LaSalle Bank, N.A., as assignee from German  
American Capital Corp., Trustee for the  
Registered Holders of CD 2006-CD3)  
Commercial Mortgage Securities Corp.,  
Commercial Mortgage Pass-Through  
Certificates,**

Plaintiff,

v.

**EXTELL BOSTON PARKING LLC,  
Defendant.**

**CIVIL ACTION NO.  
10-10107 -WGY**

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO SET ASIDE DEFAULT**

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**I. INTRODUCTION**

Defendant Extell Boston Parking LLC ("Extell" or "Defendant") submits this Memorandum in Support of its Motion to Set Aside the Default previously entered in favor of the Plaintiff, Bank of America, N.A., as successor to LaSalle Bank, N.A., as assignee from German American Capital Corp., Trustee for the Registered Holders of CD 2006-CD3 Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates ("Lender" or "Plaintiff"), and in support of its additional request that the Court grant it an additional fourteen (14) days from today to file its answer or otherwise respond to the complaint, or until May 26, 2010. As detailed below, Extell had good reason for not filing a responsive pleading prior to the entry of default, and the Plaintiff will not be prejudiced by the Court granting the relief sought by Extell.

## **II. ARGUMENT**

The Plaintiff filed its complaint in this matter on January 25, 2010 and effected service of the complaint shortly thereafter on January 26, 2010. Promptly after the filing of the complaint, Extell began continuous negotiations with Plaintiff's special servicer, J. E. Robert Company, in an effort to resolve this dispute. During the course of these negotiations, Extell made substantial cash offers to the special servicer, including an offer made as recently as Friday, May 7, 2010. It was the understanding of Extell's counsel engaged in these negotiations that an understanding had been reached that Extell would not be required to answer or otherwise respond to Plaintiff's complaint during the pendency of the negotiations.

On the evening of Monday, May 10, 2010, however, Plaintiff filed a request to enter default against Extell on the grounds that Extell had failed to serve a responsive pleading or otherwise defend against Plaintiff's complaint. Plaintiff did not serve Extell with a copy of its request and did not otherwise indicate that it would be filing a request for entry of default. Immediately upon Extell's discovery that Plaintiff had filed a request for entry of default, Plaintiff took steps to ensure that it would have an opportunity to respond to Plaintiff's complaint., but was unable to file a responsive motion prior to entry of default by the Court, despite a diligent attempt to do so.

Plaintiff will not be prejudiced by the Court setting aside the default in this matter. Specifically, Plaintiff's decision to wait over three months before filing a request for default is evidence that there was an understanding that the parties were working to resolve this dispute. Moreover, it is in the interest of justice that Extell have an opportunity to present its defenses and to allow the Court to consider Extell's position with respect to Plaintiff's claims.

**III. CONCLUSION**

Extell therefore requests that the Court set aside the default and enlarge the time in which Extell has to answer or otherwise respond to Plaintiff's Complaint until May 26, 2010.

**EXTELL BOSTON PARKING LLC**

By its attorneys,

*Stephen D. Rosenberg*

May 12, 2010

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Stephen D. Rosenberg  
**The McCormack Firm, LLC**  
One International Place – 7th Floor  
Boston, MA 02110  
Ph: 617•951•2929  
Fax: 617•951•2672  
E-mail: srosenberg@mccormackfirm.com

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants, as identified on the Notice of Electronic File ("NEF"), and paper copies will be sent to those indicated as non-registered participants on May 12, 2010, by first class mail.

*Stephen D. Rosenberg*

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Stephen D. Rosenberg

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